

REMARKS

In response to the Office Action of March 27, 2007, applicants respectfully request reconsideration and allowance of the claims in their amended form.

By this amendment applicants have submitted for the Examiner's review three new Replacement Sheets of drawings which have been prepared by a professional patent draftsman. It is submitted that the drawings and in particular, the quality of the lines and reference characters are deemed to be in conformance with the requirements of 37 CFR 1.121(d).

Applicants have also made a grammatical correction to the third paragraph on page 6 of their specification.

With respect to the claims applicants have incorporated the subject matter of claim 2 into claim 1 in order to further define protective device as being composed of an inert plastic material having frictional coefficient properties such that no adhesives are needed to hold the device on the skin.

Moreover, applicants have further defined the thickness of the sheet as being from about 0.015 to about 0.20 mm. In view of the above, applicants have withdrawn claim 2 from the application. Claim 7 has also been withdrawn in view of the Examiner's objection that the claim was indefinite and vague and in order to advance the prosecution of the application.

It is respectfully submitted that claims 1,3,6, and 8-10 as amended now particularly point out and distinctly claim the subject matter that applicants regard as their invention. Withdrawal of the rejection under 35 USC 112, second paragraph, is respectfully requested.

Applicants have again carefully reviewed the Kurth et al reference and respectfully submit that their invention as presently claimed is not anticipated under 35 USC 102(b).

Kurth et al discloses and claims, as noted by the Examiner, a toe aeration appliance. As indicated at column 1, lines 38 et seq., of Kurth et al it is stated that the invention is designed to fill a modern day need: i.e. to supply oxygen and remove moisture from the toes.

In contrast to Kurth et al, applicants' invention has nothing to do with toe aeration or moisture control of the area between two or more toes. Hence, the configuration of the patentee's appliance is designed for a different purpose than the present invention. Applicants' device is designed specifically to protect irritation due to wearing of thong-type sandals and other similar footwear.

A careful examination and comparison of the drawings and claims will show that in applicants' invention it is the web space between adjacent toes, particularly the web space between the big toe and the adjacent toe where irritation occurs when the wearer of sandals is in motion. In order to obtain minimize friction, the device must have a very limited thickness, flexibility and frictional coefficient properties which avoid the use of adhesives and the specific configuration as shown in applicants' drawings and more particularly as claimed in the application.

Figure 2 of the Kurth et al reference is indicated to be an end view of the front view of Figure 1. Reference character 12 of Figure 2 is described in the Kurth et al reference as the base portion of the toe aeration appliance. Reference character 14 is the spacing portion. However, there is no showing in the Kurth et al figures of a combination of the plantar base zone, dorsal flap, or web space as recited in applicants' claims. The entire

left side of the Kurth et al appliance is flat. In view of the thickness of the Kurth et al appliance as depicted in the drawings one would not expect it to be capable of bending completely around the web section of a toe. In contrast in applicants' device as shown for example in Figure, 4, when worn, the device bends around the area of the web space so that the planter base zone and the dorsal flap are almost parallel to each other and protect the skin around the web space.

For an invention to be anticipated by the prior art, each and every feature of the claimed invention must be shown by the reference. Kurth et al fails to show each and every aspect of the present invention as shown in applicants' drawings and claims.

Withdrawal of the rejection is therefore respectfully requested.

With respect to the Kurth et al reference cited by the Examiner, applicants therefore respectfully submit that claims 1-5, and 10 are not anticipated under 35 USC 102(b) by this reference.

Applicants have also carefully reviewed the Crunkleton reference and respectfully submit that claims 3, 6 and 10 are not anticipated under 35 USC 102(e). This reference is directed to a method and device for the symptomatic relief for soft corns.

In Figure 3 of this reference the patentee discloses a spacer 12 and a dam 14 which are employed in his invention. Evidently, spacer 12 maintains separation of the toes while the corn is treated and while dam 14 prevents spillage of the material applied for the treatment. Neither of these features are part of applicants' claimed invention.

However, the Examiner has made reference to Figure 5 and the description in paragraph 36 of Crunkleton's specification. Figure 5 depicts a mold formed after application of the mold material using the mold applicator of the reference. Applicants

respectfully submit that the mold 40 is not of the same configuration as the protective device disclosed and claimed in dependent claims 3, 6 and 10 of the present invention which claims are dependent on claim 1. Claim 1 as noted above, specifies not only a particular configuration which is not shown in the reference, but important features such as a narrow thickness range of the sheet, its flexibility due to its thinness and its frictional coefficient which avoids the use of an adhesive. Moreover, the mold of the reference occupies most of the space between the toes as shown in Figure 5a, whereas when one is wearing sandals as in applicants' invention the thong fits closely against the web space.

Again, applicants respectfully submit that each and every feature of applicants' invention is not shown in the Crunkleton reference. Applicants further submit that in determining anticipation one must take into consideration the intended use of the appliance or device. In the present case neither reference cited by the Examiner discloses the use of a device for the protection against frictional irritation of the web space due to wearing thong-type sandals. In fact it would be nearly impossible for one to use either the devices of Kurth et al or Crunkleton for the same purpose as applicants' invention. Neither reference discloses a thin, flexible sheet of the indicated thickness and frictional coefficient properties for adhering to the skin. Withdrawal of the rejection is therefore respectfully requested.

Applicants also submit that claims 8 and 9 of the present invention would not have been obvious under 35 USC 103(a) over the Kurth et al reference in view of the Dumitrascu reference. As discussed above, the primary reference discloses a toe appliance for aeration and moisture absorption. The secondary reference is directed to an adhesive skin protection patch for the forefoot. In this secondary reference it appears to

be essential that the appliance employ an adhesive. See Paragraph [0034] wherein it is stated that the material can be applied to the skin by means of adhesion. The same language is also employed in claim 1 of the reference. Since the references are directed to different aspects of footcare, one of ordinary skill in the art would find no suggestion or incentive to combine the references in the manner indicated by the Examiner.

While applicants acknowledge that the configuration of a device by itself may not be sufficient to render the device patentable, if such device has other properties which are not shown or obvious from the prior art, such device may be patentable.

In the present case, applicants' device not only has a particular configuration as recited in the claims, but has a particular sheet thickness and has frictional coefficient properties which permits the device to adhere to the skin of the foot without the need for an adhesive.

Since the secondary reference only discloses a patch which requires an adhesive if such reference were taken with Kurth et al it still would not render applicants' invention obvious under 35 USC 103. In the absence of the present specification it is highly unlikely that one of ordinary skill with knowledge of the primary and secondary references would have any incentive or motivation to arrive at the present invention. Withdrawal of the rejection under 35 USC 103 is therefore respectfully requested.

For each of the foregoing reasons, applicants submit that the claims in their present form are in condition for allowance. Early, favorable action is therefore respectfully requested.

Tel. No. 212-986-5801

Respectfully submitted.


William R. Moran

Reg. No. 19,555

Attorney for applicants